

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

ROBERT STEWART)
1047 S. Palm Canyon Drive)
Palm Springs, CA 92264)

OAH No. L-57872

DECISION

Certificate No. CPA 17420,)

Respondent.)
_____)

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Accountancy as its decision in the above-entitled matter.

This Decision shall become effective May 27, 1995.

IT IS SO ORDERED April 27, 1995.

BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



rfm

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	No. AC-92-10
)	
ROBERT STEWART)	L-57872
1047 S. Palm Canyon Drive)	
Palm Springs, CA 92264)	
)	
License No. CPA 17420,)	
)	
Respondent.)	

PROPOSED DECISION
FOLLOWING REOPENING OF RECORD

This matter was heard by Humberto Flores, Administrative Law Judge of the Office of Administrative Hearings, on April 11, 12, 13, 14 and 15, 1994, at Palm Springs, California.

Complainant was represented by David Taglienti, Deputy Attorney General. Respondent appeared personally and represented himself.

Oral and documentary evidence was received and the record was left open to allow complainant to submit certified copies of the Articles of Incorporation and a Statement of Domestic Stock of Genesis Seminars, Inc. Said documents were received on April 29, 1994, and admitted as Exhibits "36" and "37" respectively.

Both parties were also ordered to submit written closing arguments. On May 20, 1994, respondent submitted his "Brief and Closing Argument" which marked exhibit "Y" for identification only. On May 25, 1994, complainant submitted his "Opening Summation" which was marked Exhibit "38" for identification only.

On May 31, 1994, respondent submitted a letter objecting to complainant's Opening Summation for failing to submit said summation in a timely manner. Said letter is marked Exhibit "Z" for identification only. On June 8, 1994, respondent submitted a "Response to Complainant's Opening Summary" which was marked Exhibit "AA" for identification only.

On June 9, 1994, complainant submitted a letter informing the Administrative Law Judge that complainant had not received respondent's closing argument. This letter was marked Exhibit "39" for identification only. Respondent mistakenly believed that he was only required to serve the Administrative Law Judge and not the complainant.

On July 21, 1994, the Administrative Law Judge issued an Order requiring respondent to serve complainant with copies of all closing and reply briefs submitted by respondent. This Order was marked Exhibit "40" for identification only.

By letter dated August 11, 1994, marked exhibit "41", complainant informed the Administrative Law Judge that respondent had not yet complied with the order to serve his written arguments on complainant. Further, Complainant requested an extension of time to file its closing argument.

On August 29, 1994, the Administrative Law Judge received complainant's "Reply Argument" which was marked Exhibit "42" for identification only. On September 20, 1994, complainant submitted a letter requesting that all closing arguments be considered. This letter was marked Exhibit "43" for identification only.

After considering all of the facts and circumstances underlying the late filing of complainant's closing argument, including the fact that respondent failed to serve complainant with his closing arguments, the Administrative Law Judge denies respondent's objection and will consider all closing arguments.

The matter was originally deemed submitted on September 20, 1994, and a Proposed Decision by the Administrative Law Judge was issued December 9, 1994.

On January 13, 1995, the Administrative Law Judge received an ex parte communication in the form a letter from Gregory P. Newington, Chief, Enforcement Program, Board of Accountancy. This letter raised a question concerning finding "10" on the issue of costs for the investigation, enforcement and prosecution of this matter. Said letter is made part of the record and marked Exhibit "44".

On January 17, 1995, the Administrative Law Judge issued a Notice of Ex Parte Communication and Order pursuant to Government Code section 11513.5 (Exhibit "45"). Said Notice and Order, along with a copy of the ex parte communication, was mailed to all parties on January 17, 1995. The "Order" set aside the submission of this matter and reopened the record to give respondent an opportunity to reply to the communication, or to request further hearing on the issue of costs requested by complainant in the Accusation. Respondent did not reply within the time frame allowed under Government Code section 11513.5.

The Administrative Law Judge closed the record and matter was deemed submitted on February 1, 1995.

The Proposed Decision signed and issued by the Administrative Law Judge on December 9, 1994, is hereby set aside.

FINDINGS OF FACT

1. Carol B. Sigmann, complainant herein is the Executive Officer of the Board of Accountancy, Department of Consumer Affairs, State of California, and made and filed the Accusation and First Amended Accusation, in her official capacity.

2. On March 17, 1972, License No. CPA 17420 was issued by the Board of Accountancy ("the Board") to Robert Stewart ("respondent"). Said license has been in full force and effect at all relevant times and will expire on February 28, 1994, unless renewed.

3. Business and Professions Code 5107(a) provides the Board may seek all reasonable costs of investigation and prosecution, including attorneys fees, incurred in cases involving fiscal dishonesty in violation of section 5100(h).

4. At all relevant times herein, respondent has practiced public accounting as a sole practitioner under the name "Stewart and Company, Certified Public Accountants," 1047 So. Palm Canyon Drive, Palm Springs, California 92264.

5. A. In four separate transactions between September 1988, and August 1989, Rose Freiler, an elderly client of respondent, loaned respondent a total of \$24,600. One of the loans, a "Note-Straight" for \$15,000, dated September 16, 1988, required payment on demand and bore an interest rate of 12% per annum. Freiler also made three other separate loans of \$4,500, \$3,000, and \$2,100 respectively. Respondent had promised Freiler's sons that he would provide them with a promissory note for the \$4,500 loan but respondent never delivered said note. Respondent failed to repay any of the borrowed monies, although repeated demands for payment were made by Rose Freiler's estate.

B. At the time that Ms. Freiler made the loans, she was elderly and had a very poor memory in that she had difficulty remembering names, dates and the time of day. Ms. Freiler was also incapable of adding or subtracting, and was not capable of keeping a check register.

C. Respondent asserts that the \$15,000 note was given as security for Rose Freiler's guarantee of a bank loan that was made to "Genesis Seminars", a company owned by respondent's girlfriend. This assertion is not credible. Respondent wrote a letter to Freiler's sons (Exhibit 34) where he admits that the \$15,000 was in fact a loan. Further, the promissory note does not in any way make reference to "Genesis Seminars." In any event the evidence proved that respondent was an officer of Genesis Seminars.

D. Respondent contends in his closing argument that the trust document and will that were executed by Rose Freiler were defective, and therefore, respondent properly refused to turn over tax and financial records that were demanded by Freiler's sons. However, there is no allegation in the Accusation or Amended Accusation that respondent improperly refused to turn over documents to Freiler's heirs or lawful representatives. The issue in this case is whether respondent repaid the money he borrowed from Freiler. The answer is no. Further, respondent borrowed these funds with no reasonable expectation that he would be able to repay the loans.

E. Respondent took advantage of Freiler's age and lack of sophistication in financial matters in order to obtain the loan from her. This was a violation of respondent's fiduciary duty to Freiler.

6. A. Pursuant to a "Note-Straight" dated September 12, 1989, Rose Judson, an elderly client of respondent loaned respondent \$24,000. The note required payment on demand and bore an interest rate of 10% per annum. Respondent told Ms Judson that the loan to him would be a good investment for her and would assist him at the same time. Respondent told Judson that he had entered into lucrative business deals in Japan which would make it possible for him to quickly repay Judson.

B. On July 26, 1989, Ms. Judson was able to raise \$1,500 and loaned this money to respondent. Judson told respondent that she could not afford to lend him more. Thereafter, respondent told Ms. Judson that he was in "dire need" and asked Judson to loan him the balance of previously requested \$25,000. Respondent again reminded Ms. Judson of his pending lucrative business deals in Japan and that Judson would be paid in full when these deals closed. Ms. Judson then made an effort to raise the money and on September 12, 1989, loaned respondent \$22,500. Judson loaned respondent the money in reliance on respondent's statements, and on respondent's position as her CPA.

C. Despite repeated demands for payment, respondent paid Judson \$500 on July 18, 1990, \$500 on July 25, 1990, and \$1,000 on September 11, 1990. In December 1990, and July 1991, Judson again demanded payment in full on the note. Respondent made no further payments to her.

D. Respondent asserted that Ms. Judson had approached respondent and told him "I understand that your having financial problems. I'm prepared to loan you \$25,000." Respondent further asserted that this offer to loan him money was absolutely unsolicited. These assertions are not credible and are rejected.

E. Respondent borrowed the funds from Judson with no reasonable expectation that he would be able to repay the loans. Respondent took advantage of Ms. Judson's age and lack of sophistication in financial matters in order to obtain the loan from her. This was a violation of respondent's fiduciary duty to Judson.

7. While serving as Rose Judson's accountant and business manager, respondent simultaneously served as president of Burrard Capital Group, Inc., the listing agent and broker on property Judson owned in Lake Elsinore, California. In or about April 1990, respondent advised Judson to dispose of her Lake Elsinore property so that she could increase her monthly income. The sale was never consummated. However, it the association with either Burrard Capital Group Inc., or Burrard Capital Inc., that represented a potential conflict of interest because respondent stood to benefit from the sale of the property. Respondent's assertion that he would give up all fees for packaging the loan does not address the issue of commissions that would be paid to the listing agent, Burrard Capital Group, inc.

8. At one point in their accountant/client relationship, Judson told respondent she wished to have a will or living trust prepared. Respondent recommended an attorney and offered a drive Judson there. Judson later learned that respondent had charged her about \$500 for the recommendation and transportation without first informing Ms Judson that he would charge her for driving Ms. Judson to the Attorney's Office.

9. A. While practicing public accounting as a sole practitioner, respondent used the plural designation "Stewart and Company, Certified Public Accountants."

B. Without first registering the name with the Board, an obtaining Board approval, respondent conducted business under name "Stewart and Company, Certified Public Accountants."

10. At the hearing complainant submitted a Certification of Costs of Enforcement and Prosecution (Exhibit "3"). The certification delineated complainant's costs for investigation and prosecution in the amount of \$17,168.82. Based on the length and complexity of the hearing this amount is deemed reasonable under Business and Professions Code section 5107.

CONCLUSIONS OF LAW

1. Grounds for disciplinary action against respondent's license and licensing rights exist under the provisions of Business and Professions Code section 5100(h) for borrowing money from elderly clients and substantially failed to repay the loans, as set forth in findings 5 and 6.

2. Grounds for disciplinary action against respondent's license and licensing rights exist under the provisions of Business and Professions Code section 5100(h)(2) in that he borrowed money from elderly clients under false pretenses, as set forth in findings 5 and 6.

3. Grounds for disciplinary action against respondent's license and licensing rights exist under Rule 60 of the Code of Regulations in that he breached a fiduciary responsibility and engaged in acts of fiscal dishonesty regarding the transactions set forth in findings 5 and 6.

4. Grounds for disciplinary action against respondent's license and licensing rights exist under Rule 57 of the Code of Regulations in that he concurrently engaged in the practice of public accounting and in another business or occupation which impaired his objectivity, or created a conflict of interest in rendering professional services set forth in finding 7.

5. Grounds for disciplinary action against respondent's license and licensing rights exist under Rule 66 of the Code of Regulations in that he practiced public accounting as a sole practitioner while using a plural designation, set forth in finding 9(A).

6. Grounds for disciplinary action against respondent's license and licensing rights exist under Rule 67 of the Code of Regulations in that he practiced as a principal under a name other than his own before registering the name with, and obtaining the approval of the Board, set forth in finding 9(B).

7. Grounds for disciplinary action against respondent's license and licensing rights exist under the provisions of Business and Professions Code section 5100(f), in that he willfully violated sections 5100(h)(2) of the Code, as set forth in findings 5 and 6.

8. Grounds exist to order respondent to pay costs of investigation, enforcement and prosecution of this matter, by reason of finding 10.

* * ORDER * *

I

The Certified Public Accountant License No. CPA 17420, issued to respondent Robert Stewart is hereby revoked.

II

Respondent is hereby ordered to pay \$17,168.82 to the Board of Accountancy for the investigation, enforcement and prosecution of this matter.

DATED: February 14, 1995

Humberto Flores

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

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STATE BOARD OF ACCOUNTANCY
SACRAMENTO

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Attorneys for Complainant

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	NO. AC-92-10
Against:)	
ROBERT STEWART)	FIRST AMENDED
1047 South Palm Canyon Drive)	<u>ACCUSATION</u>
Palm Springs, CA 92264)	
License No. CPA 17420)	
Respondent.)	

Complainant Carol B. Sigmann, as causes for discipline,
alleges:

1. Complainant is the Executive Officer of the Board
of Accountancy (hereinafter "the Board"), Department of Consumer
Affairs, State of California, and makes and files this First
Amended Accusation in her official capacity.

LICENSE STATUS

2. On March 17, 1972, License No. CPA 17420 was
issued by the board to Robert Stewart ("respondent"). The
license has been in full force and effect at all relevant times
herein and will expire February 28, 1994, unless renewed.

1 STATUTES

2 3. This Accusation is made in reference to the
3 following statutes of the California Business and Professions
4 Code ("Code"):

5 a. Section 5100 provides the Board may revoke or
6 suspend the license of any licensee who is guilty of
7 unprofessional conduct. Unprofessional conduct includes, but is
8 not limited to, the following:

9 "(c) Dishonesty, fraud, or gross negligence in
10 the practice of public accountancy or in the
11 performance of the bookkeeping operations described in
12 section 5052.

13 ".

14 "(f) Willful violation of any provision of this
15 chapter or any rule or regulation promulgated by the
16 board under the authority granted under this chapter.

17 ".

18 "(h) Fiscal dishonesty or breach of fiduciary
19 responsibility of any kind.

20 ".

21 "(j) Embezzlement, theft, misappropriation of
22 funds or property, or taking money, property or other
23 valuable consideration by fraudulent means or false
24 pretenses." (formerly § 5100(h)(2).)

25 b. Section 5107(a) provides the Board may seek all
26 reasonable costs of investigation and prosecution, including
27 attorneys fees, from a licensee found guilty of unprofessional

1 conduct in violation of sections 5100(c) and (j) or in cases
2 involving fiscal dishonesty in violation of section 5100(h).

3 4. This Accusation is also made in reference to the
4 following rules of the California Code of Regulations (formerly
5 the Cal. Admin. Code), Title 16:

6 a. Rule 57 provides a licensee shall not concurrently
7 engage in the practice of public accountancy and in any other
8 business or occupation which impairs the licensee's independence,
9 objectivity, or creates a conflict of interest in rendering
10 professional services.

11 b. Rule 60 provides a licensee shall not engage in
12 conduct which constitutes fiscal dishonesty or breach of a
13 fiduciary responsibility of any kind.

14 c. Rule 66 provides an individual practitioner shall
15 not use the plural designations "Certified Public Accountants" or
16 "Public Accountants."

17 d. Rule 67 provides no permit holder shall practice
18 as a principal under a name other than his or her own name until
19 such name has been registered with the board and approved by the
20 board as not being false or misleading.

21 e. Rule 68 provides a licensee of the Board, after
22 demand by or on behalf of a client, for books, records or other
23 data, whether in written or machine sensible form, that are the
24 client's records shall not retain such records.

25 FACTS

26 5. At all relevant times herein, respondent has
27 practiced public accounting as a sole practitioner under the name

1 "Stewart and Company, Certified Public Accountants," 1047 South
2 Palm Canyon Drive, Palm Springs, California, 92264.

3 6. In five separate transactions between September
4 1988 and August 1989, Rose Freiler, an elderly client of
5 respondent and victim of dementia and symptoms of Alzheimer's
6 disease, loaned respondent a total of \$27,100. One of the loans,
7 a "Note-Straight" for \$15,000, dated September 16, 1988, required
8 payment on demand and bore an interest rate of 12 percent per
9 annum. Respondent failed to repay any of the borrowed monies,
10 although repeated demands for payment were made by Rose Freiler's
11 estate.

12 7. Pursuant to a "Note-Straight" dated September 12,
13 1989, Rose Judson, an elderly client of respondent and victim of
14 a recent stroke, loaned respondent \$24,000. The note required
15 payment on demand and bore an interest rate of 10 percent per
16 annum. Respondent advised Judson the loan would be a good
17 investment for her, and would assist him at the same time. In
18 reliance on respondent's financial acumen, Judson loaned
19 respondent the money. In the face of repeated demands for
20 payment, respondent paid Judson \$500 on July 18, 1990, \$500 on
21 July 25, 1990, and \$1,000 on September 11, 1990. In December
22 1990 and July 1991, Judson again demanded payment in full on the
23 note. Respondent made no further payments to her.

24 8. While serving as Rose Judson's accountant and
25 financial adviser, respondent simultaneously served as president
26 of Burrard Capital Group, Inc., the listing agent and broker on
27 property Judson owned in Lake Elsinore, California. In or about

1 May 1990, respondent advised Judson to dispose of her Lake
2 Elsinore property so that she could increase her monthly income,
3 knowing that, as listing agent and broker, Burrard Capital would
4 enjoy a 10 percent commission on the sale of the property. The
5 sale was never consummated.

6 9. At one point in their professional relationship,
7 Judson told respondent she wished to have a will or living trust
8 prepared. Respondent recommended an attorney and offered to
9 drive Judson there. Judson later learned that respondent had
10 charged her about \$500 for the recommendation and transportation.

11 10. While practicing public accounting as a sole
12 practitioner, respondent used the plural designation, "Stewart
13 and Company, Certified Public Accountants."

14 11. Without first registering the name with the Board,
15 and obtaining Board approval therefor, respondent conducted
16 business under the name, "Stewart and Company, Certified Public
17 Accountants."

18 ALLEGATIONS

19 12. Respondent is subject to discipline under section
20 5100(h) of the Code in that he engaged in conduct involving
21 fiscal dishonesty by borrowing money from elderly, mentally-
22 impaired female clients and substantially failing to repay those
23 loans, as alleged in paragraphs 6 and 7, above.

24 13. Respondent is subject to discipline under section
25 5100(h) of the Code in that he engaged in conduct constituting a
26 breach of fiduciary responsibility, as follows:

27 \ \ \

1 a. Complainant incorporates by reference the factual
2 allegations in paragraphs 6 through 9, above, as though fully set
3 forth herein.

4 b. Respondent advised client Rose Freiler to invest
5 over 50 percent of her assets into limited partnerships between
6 1987 and 1990.

7 14. Respondent is subject to discipline under section
8 5100(j) of the Code in that he obtained money by false pretenses
9 from elderly, mentally-impaired female clients, as alleged in
10 paragraphs 6 and 7, above.

11 15. Respondent is subject to discipline under section
12 5100(c) of the Code in that he committed acts of gross negligence
13 in the practice of public accountancy by advising client Rose
14 Freiler to invest over 50 percent of her assets into limited
15 partnerships between 1987 and 1990.

16 16. Respondent is subject to discipline under Rule 60
17 of the Code of Regulations in that he engaged in acts of fiscal
18 dishonesty by borrowing money from elderly, mentally-impaired
19 female clients and substantially failing to repay those loans, as
20 alleged in paragraphs 6 and 7, above.

21 17. Respondent is subject to discipline under Rule 60
22 of the Code of Regulations in that he breached a fiduciary
23 responsibility owed to Rose Freiler and Rose Judson, as follows:

24 a. Complainant incorporates by reference the factual
25 allegations alleged in paragraphs 6 through 9, and paragraph 13,
26 subdivision b, above, as though fully set forth herein.

27 \\ \\ \\

1 18. Respondent is subject to discipline under Rule 57
2 of the Code of Regulations in that he concurrently engaged in the
3 practice of public accounting and in another business or
4 occupation which impaired his objectivity, or created a conflict
5 of interest in rendering professional services, as alleged in
6 paragraph 8, above.

7 19. Respondent is subject to discipline under Rule 66
8 of the Code of Regulations in that he practiced public accounting
9 as a sole practitioner while using a plural designation, as
10 alleged in paragraph 10, above.

11 20. Respondent is subject to discipline under Rule 68
12 of the Code of Regulations in that he retained Rose Freiler's
13 records after demands therefor had been made by Frank Freiler,
14 Rose's son and co-trustee of the Rose Freiler Living Trust

15 21. Respondent is subject to discipline under Rule 67
16 of the Code of Regulations in that he practiced as a principal
17 under a name other than his own before registering the name with,
18 and obtaining approval by, the board, as alleged in paragraph 11,
19 above.

20 22. Respondent is subject to discipline under section
21 5100(f) of the Code in that he willfully violated a provision of
22 the Code, as alleged in paragraphs 6 through 11, above.

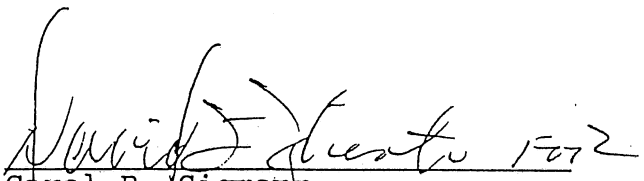
23 WHEREFORE, complainant requests that a hearing be held
24 on the matters alleged herein and, that following the hearing,
25 the board issue its decision:

26 1. Revoking or suspending License Number CPA
27 17420, issued to respondent Robert Stewart;

1 2. Ordering restitution of all reasonable costs
2 of investigation and prosecution, including attorneys
3 fees, incurred in this case; and

4 3. Taking such other and further action as the
5 board deems appropriate and proper.

6 DATED: 5-19-93

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10 Carol B. Sigmann
11 Executive Officer
12 Board of Accountancy
13 Department of Consumer Affairs
14 State of California

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27 Complainant

1 DANIEL E. LUNGREN, Attorney General
2 of the State of California
3 DAVID F. TAGLIENTI,
4 Deputy Attorney General
5 Department of Justice
6 110 West A Street, Suite 700
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11 Attorneys for Complainant

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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Accusation) NO. AC-92-10
11 Against:)
12) ACCUSATION
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ROBERT STEWART
1047 S. Palm Canyon Drive
Palm Springs, CA 92264
License No. CPA 17420
Respondent.

17 Complainant Carol B. Sigmann, as cause for discipline,
18 alleges:

19 1. Complainant is the Executive Officer of the Board
20 of Accountancy, Department of Consumer Affairs, State of
21 California, and makes and files this accusation in her official
22 capacity.

23 LICENSE STATUS

24 2. On March 17, 1972, License No. CPA 17420 was
25 issued by the Board of Accountancy ("the Board") to Robert
26 Stewart ("respondent"). Said license has been in full force and
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1 effect at all relevant times and will expire on February 28,
2 1994, unless renewed.

3 STATUTES

4 3. This accusation is made in reference to the
5 following statutes of the California Business and Professions
6 Code ("Code"):

7 a. Section 5100 provides the Board may revoke or
8 suspend the license of any licensee who is guilty of
9 unprofessional conduct. Unprofessional conduct includes, but is
10 not limited to:

11 "(f) Willful violation of any provision of this
12 chapter or any rule or regulation promulgated by the board under
13 the authority granted under this chapter.

14 ". . .

15 "(h) Fiscal dishonesty or breach of fiduciary
16 responsibility of any kind, including, but not limited to, the
17 following:

18 ". . .

19 "(2) Embezzlement, theft, misappropriation of
20 funds or property, or taking money, property or other valuable
21 consideration by fraudulent means or false pretenses."

22 b. Section 5107(a) provides the Board may seek all
23 reasonable costs of investigation and prosecution, including
24 attorneys fees, incurred in cases involving fiscal dishonesty in
25 violation of section 5100(h).

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1 4. This accusation is also made in reference to the
2 following rules of the California Code of Regulations (formerly
3 the California Administrative Code), Title 16:

4 a. Rule 57 provides a licensee shall not concurrently
5 engage in the practice of public accountancy and in any other
6 business or occupation which impairs the licensee's independence,
7 objectivity, or creates a conflict of interest in rendering
8 professional services.

9 b. Rule 60 provides a licensee shall not engage in
10 conduct which constitutes fiscal dishonesty or breach of a
11 fiduciary responsibility of any find.

12 c. Rule 66 provides a certified public accountant or
13 a public accountant in practice as an individual shall not use a
14 firm name which includes plural terms such as "and Company" or
15 "and Associates," unless he or she maintains a full-time
16 professional staff consisting of a licensee or an employee or
17 assistant as described in Section 5053 of the Accountancy Act.

18 d. Rule 67 provides no permit holder shall practice
19 as a principal under a name other than his or her own name until
20 such name has been registered with the Board and approved by the
21 Board as not being false or misleading.

22 FACTS

23 5. At all relevant times herein, respondent has
24 practiced public accounting as a sole practitioner under the name
25 "Stewart and Company, Certified Public Accountants," 1047 So.
26 Palm Canyon Dr., Palm Springs, California 92264.

27 ///

1 6. In five separate transactions between September
2 1988, and August 1989, Rose Freiler, an elderly client of
3 respondent and victim of dementia and Alzheimer's disease, loaned
4 respondent a total of \$27,100. One of the loans, a "Note-
5 Straight" for \$15,000, dated September 16, 1988, required payment
6 on demand and bore an interest rate of %12 per annum. Respondent
7 failed to repay any of the borrowed monies, although repeated
8 demands for payment were made by Rose Freiler's estate.

9 7. Pursuant to a "Note-Straight" dated September 12,
10 1989, Rose Judson, an elderly client of respondent and victim of
11 a recent stroke, loaned respondent \$24,000. The note required
12 payment on demand and bore an interest rate of %10 per annum.
13 Respondent advised Judson the loan would be a good investment for
14 her, and would assist him at the same time. In reliance on
15 respondent's financial acumen, Judson loaned respondent the
16 money. In the face of repeated demands for payment, respondent
17 paid Judson \$500 on July 18, 1990, \$500 on July 25, 1990, and
18 \$1000 on September 11, 1990. In December 1990, and July 1991,
19 Judson again demanded payment in full on the note. Respondent
20 made no further payments to her.

21 8. While serving as Rose Judson's accountant and
22 business manager, respondent simultaneously served as president
23 of Burrard Capital Group, Inc., the listing agent and broker on
24 property Judson owned in Lake Elsinore, California. In or about
25 May 1990, Respondent advised Judson to dispose of her Lake
26 Elsinore property so that she could increase her monthly income,
27 knowing that, as listing agent and broker, Burrard Capital would

1 enjoy a 10% commission on the sale of the property. The sale was
2 never consummated.

3 9. At one point in their accountant/client
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5 living trust prepared. Respondent recommended an attorney and
6 offered to drive Judson there. Judson later learned that
7 respondent had charged her about \$500 for the recommendation and
8 transportation.

9 10. While practicing public accounting as a sole
10 practitioner, respondent used the plural designation "Stewart and
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12 11. Without first registering the name with the Board,
13 and obtaining Board approval, respondent conducted business under
14 name "Stewart and Company, Certified Public Accountants."

15 ALLEGATIONS

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20 13. Respondent is subject to discipline under section
21 5100(h)(2) of the Code in that he borrowed money from elderly
22 clients under false pretenses, as alleged in paragraphs 6 and 7,
23 above.

24 14. Respondent is subject to discipline under Rule 60
25 of the Code of Regulations in that he engaged in acts of fiscal
26 dishonesty, as alleged in paragraphs 6 and 7, above.

27 ///

1 15. Respondent is subject to discipline under Rule 60
2 of the Code of Regulations in that he breached a fiduciary
3 responsibility owed to Rose Freiler and Rose Judson, as alleged
4 in paragraphs 6 through 9, above.

5 16. Respondent is subject to discipline under Rule 57
6 of the Code of Regulations in that he concurrently engaged in the
7 practice of public accounting and in another business or
8 occupation which impaired his objectivity, or created a conflict
9 of interest in rendering professional services, as alleged in
10 paragraph 8, above.

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12 of the Code of Regulations in that he practiced public accounting
13 as a sole practitioner while using a plural designation, as
14 alleged in paragraph 10, above.

15 18. Respondent is subject to discipline under Rule 67
16 of the Code of Regulations in that he practiced as a principal
17 under a name other than his own before registering the name with,
18 and obtaining the approval of, the Board, as alleged in paragraph
19 11, above.

20 19. Respondent is subject to discipline under section
21 5100(f) of the Code in that he willfully violated a provision of
22 the Code, as alleged in paragraphs 6 through 11, above.

23 WHEREFORE, complainant requests that a hearing be held
24 on the matters alleged herein and, that following the hearing,
25 the Board issue its decision:

26 1. Revoking or suspending License Number CPA 17420,
27 issued to respondent Robert Stewart;

1 2. Ordering restitution of all reasonable costs of
2 investigation and prosecution, including attorneys fees,
3 incurred in this case; and

4 3. Taking such other and further action as the Board
5 deems appropriate and proper.

6 DATED: June 29, 1992

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9 Carol B. Sigmann
10 Executive Officer
11 Board of Accountancy
12 Department of Consumer Affairs
13 State of California

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Complainant